

THE ICAP UPDATE

For members. For Iowans.



Winter weather got you down? We've got tips to help lift you back up.

#icapiowa



NOTICE


On December 30, 2019, ICAP filed a petition in Polk County District Court challenging the Iowa Auditor of the State's authority to investigate or audit ICAP.

The petition was filed in response to a subpoena previously issued by the auditor's office that requested ICAP board packet information, as well as pending liability claims information.

The petition we filed seeks a writ of certiorari annulling the subpoena and a declaratory order affirming that the Auditor of the State, under current Iowa law, does not have the jurisdiction or authority to conduct or complete an audit, examination, investigation or "certain procedures" for the Iowa Communities Assurance Pool.

If any member has questions regarding the pending litigation with the Iowa Auditor of State, please contact Jody Smith, Chairman of the ICAP Board of Directors, via jesiaconsult@aol.com.

Please see page 22 for additional information.



WINTER WONDERLAND? Mmm... not so much. Let's talk coverage and risks. See p. 14 to learn more!

4	Board Election Results. Please join us in welcoming a new representative to the ICAP Board.
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22	An Open Letter to the Membership. Jody Smith, ICAP Board Chair, addresses the pending litigation against the Auditor of State.



The Membership Has Spoken

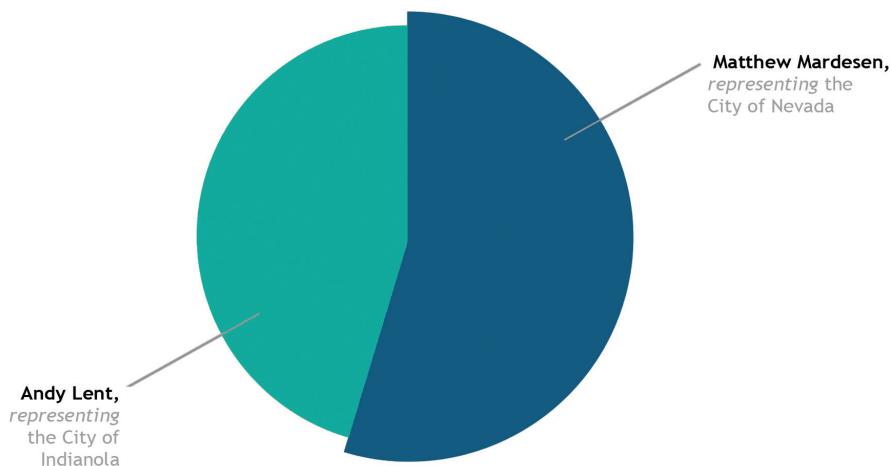
Nearly 150 ICAP member representatives voted, electing Matthew Mardesen, Larry Burger and Lois Huitink to serve the ICAP Board of Directors for the coming term.

INCUMBENT BOARD MEMBERS Lois Huitink, representing Sioux County, and Larry Burger, representing the Lake Delhi Combined Recreational Water Authority, will remain in their respective seats for the January 2020 through December 2023 term.

Matthew Mardesen, representing the

City of Nevada, was elected to fill the city seat vacated by Gary Mahannah, who served the ICAP Board for an impressive 32 years.

Mr. Mardesen ran a tight race against Andrew Lent, Director of Finance for the City of Indianola, with the final election results shown below.



“Matt is well-versed with the public service network throughout the state of Iowa and he’s a strong leader with a career history that demonstrates his innovation and integrity.”

*Matt Walsh, Mayor for the
City of Council Bluffs*

Please join us in welcoming Matthew Mardesen to the ICAP Board.

WITH A STORIED CAREER in law enforcement and public service, Mr. Mardesen brings a new perspective to the ICAP Board of Directors.

Make that a fitting perspective, given the Pool’s dedication to mitigating risks for member law enforcement agencies.

Mr. Mardesen served in the law enforcement sector for years before transitioning to city management in 2009.

He now has more than a decade of experience working on behalf of Iowa public entities. This includes three years of service for the Iowa Workforce Development; five years as the City Administrator and Economic Development Director for the City of Monroe; and more than two years as the City Administrator for the City of Nevada.

Mr. Mardesen is a Certified Public Manager and currently serves as the Chief of Staff for the City of Council Bluffs. He assumed this position in November 2019, shortly after being named Manager of the Year by the Iowa City/County Management Association.

His new position with the City of Council Bluffs means Mr. Mardesen and his wife, Joni, were able to move their three sons closer to family in their hometowns of Shelby and Anita.



IF YOU HAVE QUESTIONS regarding the operations of the Pool or anything related, you are welcome to address them to the ICAP Board of Directors, whose contact information is posted on the ICAP website. In addition, member representatives can address the Board at its regularly scheduled meetings. The next meeting will be held Thursday, April 9, in Johnston.



Excuse me, DO YOU HAVE A WARRANT FOR THAT?

Perhaps a better question is, "Do you need one?"

Navigating search and seizure situations can have serious ramifications for law enforcement and prosecutors alike. ICAP's next round of regional law enforcement trainings will address a few of those many ramifications.

This training opportunity will provide law enforcement attendees with valuable information on search and seizure law.

In the 75-minute training session, we will not only review an officer's obligations, but also provide practical case law updates on a variety of topics, including:

- Plain view searches
- Warrantless searches
- Frisk/pat searches
- Consent searches
- Exigent circumstance searches
- Searches incident to arrest
- Entries based on deception or ruses
- Warrantless home entry
- The inevitable discovery doctrine
- Fruit of the poisonous tree
- The attenuation doctrine
- Interview and interrogation law

FOUR SESSIONS TO CHOOSE FROM (locations and dates)

- **April 1** | 1:30-2:45 PM | Smith, Mills & Schrock Law Office (training facility) | 1225 Jordan Creek Parkway, Suite 108 | **West Des Moines**
- **April 2** | 1:30-2:45 PM | Ottumwa Police Department | 330 W. 2nd Street | **Ottumwa**
- **April 6** | 1:30-2:45 PM | Cerro Gordo County Law Enforcement Center | 17262 Lark Avenue | **Mason City**
- **April 8** | 1:30 - 2:45 PM | Clinton County Sheriff Office / Jail Facility | 241 7th Avenue N | **Clinton**

All sessions will be led by Kevin Techau of Smith, Mills & Schrock Law Firm. Prior to joining Smith, Mills & Schrock, Kevin served as the U.S. Attorney for the Northern District of Iowa. His 30-year career in public service includes leadership of the Iowa Department of Public Safety and Iowa Department of Inspection and Appeals. Kevin also served in the U.S. military for 27 years, including seven years of active duty with the U.S. Air Force.





Pals. Julia Pals.

As an ICAP Certified Agent and a representative of First Gabrielson Insurance, Pals knows a thing or two about all the Pool affords. Here, she tells us her five favorite things about ICAP.

- 1 ICAP Legal Access.** This is one of my top favorites! The fact members can call with questions and secure legal help at no additional cost really makes ICAP stand out.
- 2 Resource eLibrary.** All kinds of information, right at members' fingertips. From training to sample policies to educational resources on any given topic...the eLibrary is a huge asset for both members and the agents.
- 3 The ICAP Grant.** This is top notch. I have seen first-hand how great the grant is. The safety items purchased through it have been a tremendous help to our county, and have helped improve our member communities.
- 4 Risk Control.** Loss control and risk management are huge, as well. Knowing there are qualified individuals to help members navigate potential risks associated with new ventures is reassuring for our member communities.
- 5 Cyber Liability Coverage AND the Cyber eRisk Hub.** The ability to help members navigate through a breach - and also the education to have proper plans in place in case of a breach - are so important and so beneficial.

“Through the Agent Academy, I gained so much knowledge about what makes ICAP stand out as a full-coverage, full-service pool for all municipalities.”

*Julia Pals, ICAP Certified Agent
First Gabrielson Insurance*

CURIOS ABOUT any of the services or offerings Julia mentioned? Wondering if your public entity might benefit? Not sure how to get started?

Contact your ICAP representative!

This can be your ICAP Underwriter or Risk Control rep, *or* any other member of the ICAP team.

Any ICAP representative can assist you. If they don't have the answer to a question, they can find it - or point you to an individual who can.

Remember, every ICAP member can benefit from the many resources and services the Pool offers. Even better, as an ICAP member, your entity is eligible to receive such services at no additional cost.

Take ICAP Legal Access (Julia's favorite service!), for instance. Through Legal Access, every ICAP member can receive up to 300 minutes of comped legal advice from Hopkins and Huebner, a local law firm with several offices throughout the state.

This is a wonderful benefit of membership in the Pool. Take advantage of it!

We also encourage every member entity to take advantage of The ICAP Grant, which is back for 2020.

Through the Grant, every ICAP member can receive up to \$1,000 per year for the purchase of items, materials and/or services that can help mitigate the potential for loss. Take a look on the following page to see how ICAP members spent grant funds in 2019.

And make sure you chat with your ICAP representative about some of the many other services that can be of use to you.

ICAP foots the bill for such services, because they are that important for Iowa public entities. We want your entity to take advantage of them!

Visit www.icapiowa.com/services to see more of the many resources available to you. If you have questions, reach out to one of your local ICAP representatives via the contact information listed below.

General inquiries | info@icapiowa.com or 800-383-0116

Kasi Koehler, Marketing & Local Administration | kasi@icapiowa.com | 515-727-1585

Charlotte Miller, Senior Underwriter: New Business & Quality Assurance | cmiller@icapiowa.com | 515-727-1597

Tim Butler, Senior Underwriter | tim@icapiowa.com | 515-727-1584

Scott Ceaser, Underwriter | scott@icapiowa.com | 515-727-1586

John Kamerick, Underwriter | jkamerick@icapiowa.com | 515-727-1599

Alec Moore, Underwriter | alec@icapiowa.com | 515-251-1733

Joni Biggart, Executive Assistant | joni@icapiowa.com | 515-727-1589

Leah Rieck, Administrative Assistant | leah@icapiowa.com | 515-251-1733

Dan Cruse, Director of Risk Control | dan@icapiowa.com | 515-251-1733

Todd Christianson, Senior Risk Control Specialist | todd@icapiowa.com | 515-710-0881

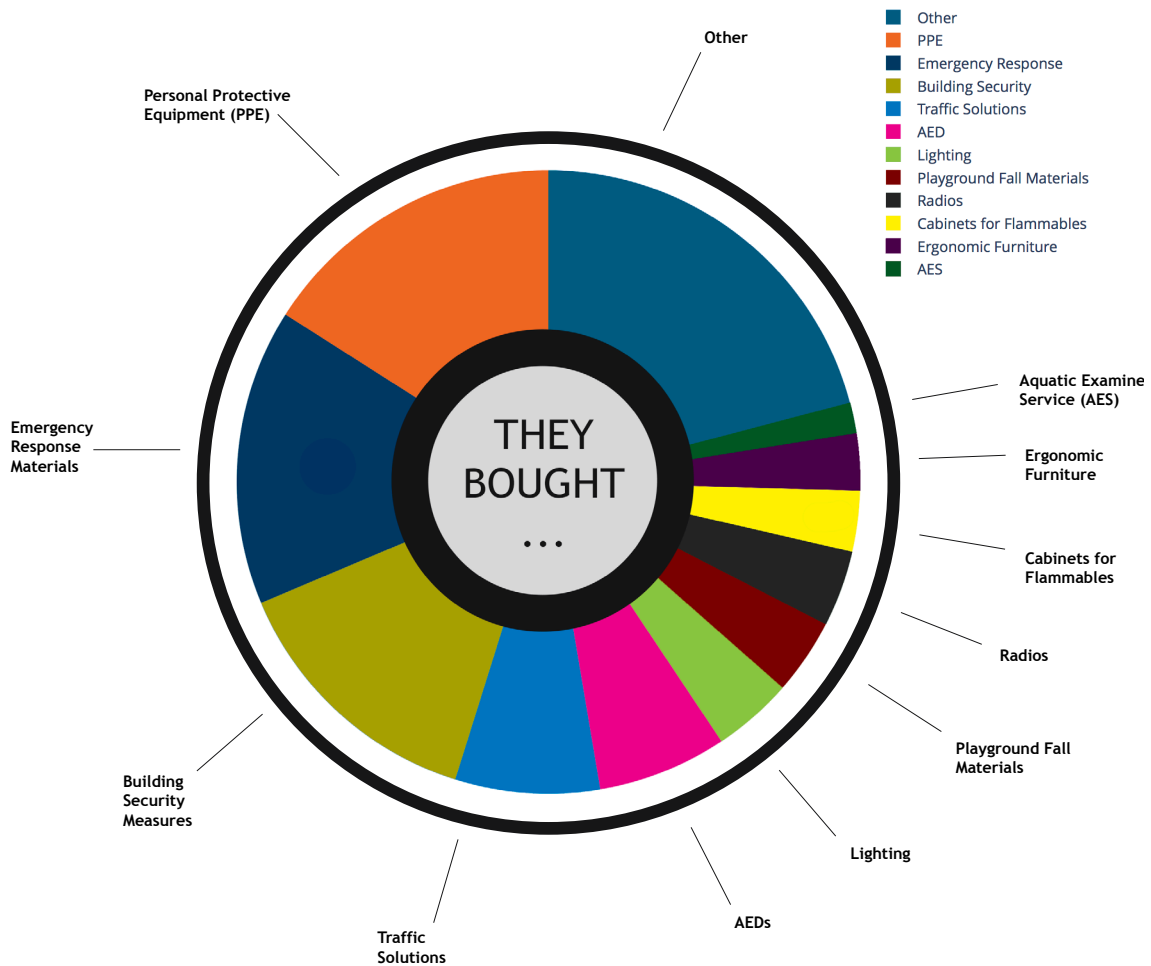
Janis Hochreiter, Senior Risk Control Specialist | janis@icapiowa.com | 515-490-1397


Lindsay Gomez, Risk Control Specialist III | lindsay@icapiowa.com | 515-336-0507

Charlie Gerken, Risk Control Specialist III | charlie@icapiowa.com | 772-205-5785

Colette Klier, IT Risk Control Specialist | colette@icapiowa.com | 515-339-8321

Four Hundred Seventy-Four Thousand, eight hundred thirteen dollars and sixty-two cents.





Grants

Anticipated Grant Trends for 2020

WE ANTICIPATE GRANT FUNDS will be utilized in a similar fashion over the coming twelve months, and expect to see a growing number of entities investing in building security measures, as well as crowd control barricades and other traffic solutions.

From interior door locks to surveillance cameras to panic buttons, exit bars, security walls, keypad systems and more - public entities are investing in building security measures.

They're also investing in public safety solutions.

We have been pleasantly surprised to see a number of ICAP members request funding for the purchase of traffic cones, crowd control barriers, road signage and temporary traffic lights.

These solutions can be invaluable to public entities that experience temporary road or sidewalk closures.

Maintenance work; a fallen tree branch; and road repair are just a few of the many causes for temporary road closures.

And that's not even mentioning community events, such as the parades; fundraisers; community concerts, performances and other events Iowa entities host and take part in each year.

In fact, in just a few months, a number of Iowa

communities will participate in RAGBRAI.

The annual event draws thousands upon thousands of individuals to the state, and requires significant traffic and crowd control measures.

If your entity is an overnight community or on the 2020 RAGBRAI route, you'll need them.

Not participating in RAGBRAI, but perhaps your entity is hosting a community event of its own? Maybe your fair is organizing offsite parking and needs to ensure a safe route for pedestrians to walk to the event entrance?

If your entity is hosting or participating in any event later this year, it's time to start planning.

Determine what crowd and traffic control measures will be necessary, and outline which devices, barricades and other equipment you will need to implement such measures successfully.

Don't have what you need? Let ICAP help.

The ICAP Grant has been extended through 2020, which means every ICAP member can again request up to \$1,000 for loss control and/or risk management items again this year.

The grant process is easy - simply submit your grant request with a receipt - or an estimate - and let ICAP work for you.

CONTINUING EDUCATION

Online. For one hour. And one CE credit.

Advance registration
required!

In 2019, we provided 450 continuing education (CE) credits to ICAP agents. This year, we intend provide even more.

Why?

Because providing more continuing education credits means agents learn more about the wants, needs, exposures of Iowa public entities. It means agents are *doing* more.

They are attending educational courses with the goal of better providing for the public entities they represent.

That's an idea and an initiative we can get behind, and we want to support those motivated agents in their endeavor.

So, for the first time ever, we are offering a four-part webinar series tailored to address some of the exposures faced by Iowa public entities.

Even better? These webinars will be offered without charge to agents and member representatives.

The first webinar in this series will be held



Thursday, February 20, at 10 AM CST. Online registration is required, and can be completed via the ICAP website (www.icapiowa.com/webinar).

For convenience, on the day of the webinar, attendees will be able to choose their preferred method of participation - either listening through a web browser or dialing in via telephone.

Attendance will be tracked digitally, and eligible agents who listen in for the duration of the webinar will receive one (1) continuing education credit for their participation.

Webinar: Winter Weather Claims

Given the relevance and the implications for Iowa public entities, this webinar will review weather-related claims.

Did you know winter storms caused an estimated \$2 billion in losses in 2018 (Impact Forecasting, Aon Benfield Analytics)?

That's a lot of loss, and no audience or individual class was immune.

This includes Iowa public entities, which continue to be impacted by winter weather claims each year.

From snowplow-induced damages to municipal vehicle accidents to slippery sidewalks, frozen pipes and more - Iowa public entities are affected by winter weather. Thus, it is essential the local insurance agents who represent those entities understand the ongoing, related risks.

To help participants grasp the severity of such impact, and the ways they can help clients mitigate related losses, we will review four real-world claim scenarios that stem from local public entities. We will break down claims, highlight coverages necessary to provide for them, and review risk control measures that could potentially have protected against them.

The webinar will last 50 minutes, with an additional 10 minutes provided for Q&A.

For insight into the types of claims that will be discussed, check out the article on the following page!

Register online!


Visit www.icapiowa.com/webinar to complete your registration today.

Tired of this view? We hear you. And we urge you to stay alert, regardless.





Snowplows are a necessary evil in Iowa. So necessary, the Iowa Department of Transportation alone has more than 900 of them throughout the state.



IN 2019, THE NATIONAL WEATHER SERVICE advised of a "snow squall warning," which is used to refer to intense, short bursts of heavy snowfall that lead to a quick reduction in visibility and usually features gusty winds, which could lead to whiteout conditions (National Weather Service).



A snow squall was a factor in the claim detailed on the page 18.

Winter Weather:

ON SUNDAY, FEBRUARY 2, Punxsutawney Phil, the groundhog, emerged from his hole in Punxsutawney, Pennsylvania.

For the second year in a row, he did *not* see his shadow. This means, as legend suggests, we are in for an early Spring.

Is it true? Does it really matter whether Punxsutawney Phil saw his shadow?

The answer: probably not.

Iowans know the midwest is prone to a late winter storm (or two) each year. It is likely 2020 will be no exception.

We understand many of our readers (if not the whole of the state) may have grown tired of the snow and ice, and may be going through

the motions until spring makes itself known. A quick Google search, though, will show countless claims related to winter weather, indicating simply going through the motions does not suffice.

Regardless of whether it's early in the season or late winter, the realities, reactions and consequences of Iowa weather can be much the same. So we urge you - stay vigilant!

Don't get comfortable with snowplows or ice on the road. Don't neglect your sidewalks, which may be covered in a slick layer of frost or ice. Don't turn your thermostats off for a weekend or vacation getaway.

Remember: the weather does not discriminate, and winter likely isn't done with us yet. Allow the following claim scenarios to serve as proof.



First things first: a few facts we think you should know.

- The Iowa Department of Transportation alone has more than 900 snowplows on Iowa roads. This does not include the many other plows and bladed vehicles used in local communities.
- The DOT also uses roughly 200,000 tons of rock salt on Iowa highways each year. This does not include the sand, salt and deicer used by residents, organizations and Iowa municipalities.
- Legislation does not prohibit passing a snowplow, but we still caution against doing it. Snowplow blades can extend between 2-10 feet beyond the width of a truck. Attempting to pass it not recommended.
- Most cities have plowing and shoveling requirements posted on their websites. Though requirements vary, most municipalities require snow removal to be completed within 12-24 hours after a snowfall.
- The average ice-related slip-and-fall claim is \$33,000 - \$48,000 if it's a workers' compensation claim (*Snow & Ice Management Association; www.sima.org*).

Winter Weather Claims

SCENARIO 1: Local resident collides with snowplow that turned illegally.

WHAT HAPPENED

A local resident was driving straight when a snowplow turned left at an intersection just in front of her. The two collided.

Fortunately, neither driver was injured. Unfortunately, the same cannot be said for the vehicles, which were left with significant cosmetic damages.

There were no stop signs at play - this was an open stretch of road, where the local resident, who was driving straight, had the right of way. At the time, roads were icy and weather conditions included heavy snowfall and bursts of wind that made visibility difficult (now aptly referred to as a snow "squall" by the National Weather Service).

WHEN IT HAPPENED

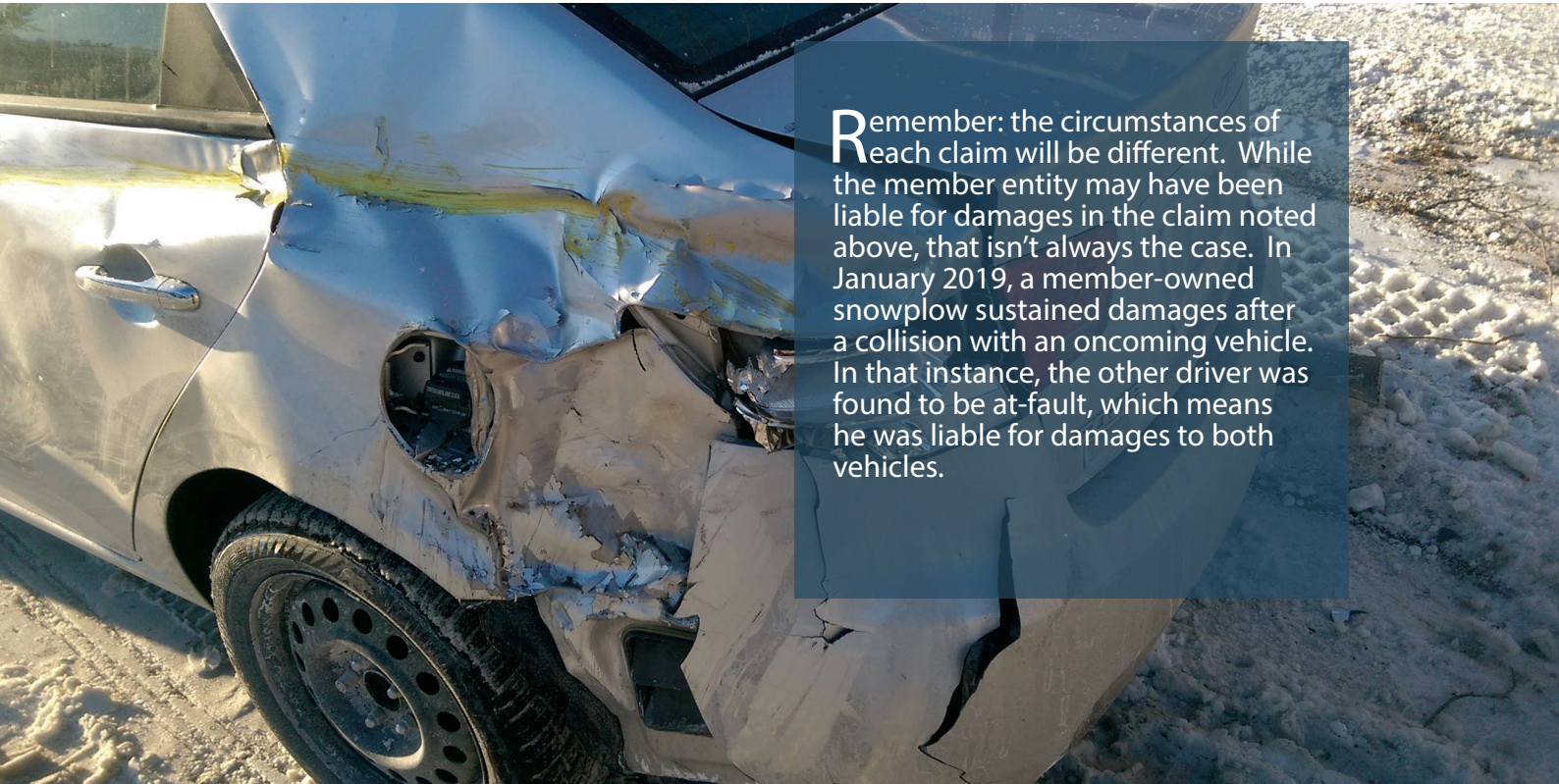
Several years ago, morning on a mid-winter day.

THE DAMAGES

Cosmetic damages to both vehicles, totalling several thousand dollars each.

WHO WAS RESPONSIBLE?

The city. Though negligence was not found to be a factor, given the road and weather conditions, the snowplow driver was at-fault for turning in front of the other driver, which meant the city was liable for the accident and, consequently, the resulting damages.



Remember: the circumstances of each claim will be different. While the member entity may have been liable for damages in the claim noted above, that isn't always the case. In January 2019, a member-owned snowplow sustained damages after a collision with an oncoming vehicle. In that instance, the other driver was found to be at-fault, which means he was liable for damages to both vehicles.

The average ice-related slip-and-fall claim is \$33,000. Ouch! What happens if a slip-and-fall occurs on municipal-owned property?



SCENARIO 2: Resident slipped and fell on ice in member-owned alley, sustaining injury.

WHAT HAPPENED

A local resident was walking through an alley on her way to her office. She fell, sustaining a knee injury in the process. She filed a claim against the city, alleging it was responsible for the fall, as it had plowed the street but had not spread ice melt or other thawing material.

WHEN IT HAPPENED

After a recent snow event earlier this winter.

THE DAMAGES

The claimant twisted her left knee.

WHO WAS RESPONSIBLE?

No one. The investigation determined the alley was, in fact, maintained by the city; however, there was no legal liability, based on Iowa Code immunity for the performance of a discretionary function. The city had, in fact, plowed the area, but it was not required to place any sort of ice melting materials on the road. Further, it was determined the claimant was aware of the conditions of the alley, due to it being open and obvious.

As a result, the claim for liability was denied. The city does have limited premise med pay coverage, though, which allows ICAP to make payment for out of pocket medical expenses incurred because of bodily injury that occurred on city-owned property, regardless of whether the city was liable for the injury.



Not sure what is required of your entity? Concerned about a specific issue, or looking for general recommendations on deicers, shoveling or anything else weather-related? Contact your ICAP Risk Control Representative!

Winter Weather Claims

SCENARIO 3: A burst pipe caused damage to member property located within a non-member owned building.



WHAT HAPPENED

An employee entered the building at the start of business, only to discover a pipe had burst, resulting in standing water and significant damages.

WHEN IT HAPPENED

Last February (2019), during a late-winter cold snap.

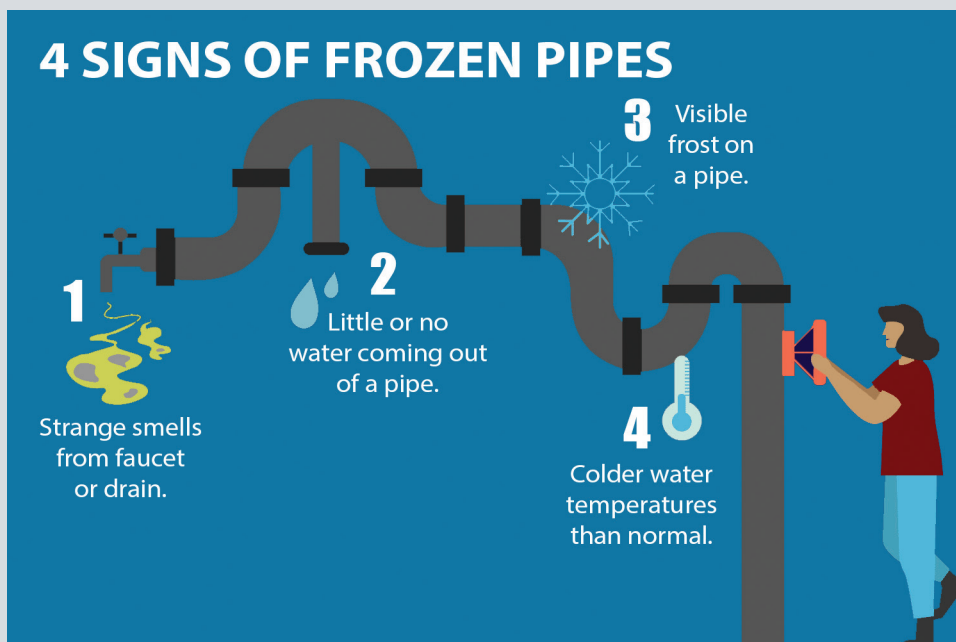
THE DAMAGES

Sections of the building sustained irreparable water damage and required gutting down to the studs. In addition, it was determined a large array of building contents, including books totaling thousands of dollars, were water damaged beyond repair. As a result of the damage to the structure, parts of the building could not be occupied during the clean-up and repair phase, which resulted in relocation costs and loss of use.

WHO WAS RESPONSIBLE?

The building was owned by a non-member entity, which meant that entity's coverage provider was responsible for determining coverage for the structure. The member entity that was affected by this loss had contents coverage through ICAP for the affected location; as such, the damaged member-owned property was covered by the Pool.

These are things every Iowan should know!





Educational events for members and agents - we've got it all.

2020 Dates to Remember

Though the New Year is, well, new, it's time to save some dates! Take a look at the events noted below, and make note in your calendar. If you have questions or would like additional information on any given event, email us via info@icapiowa.com.

- **Educational Summit** | June 4
- **Agent Academy** | March 26 (Part I) | September 10 (Part II)
- **ICAP Agent Seminar** | November 5
- **Webinars** | February 20 | May 21 | August 20 | October 22 (10-11 AM)
- **ICAP Board Meetings** | April 9 | June 11 | August 7-8 | October 9
- **Regional Law Enforcement Trainings** | April 1, 2, 6 & 8 | 1:30 - 2:45 PM

See page 7 for additional information on the April sessions.

Regional trainings on motor vehicle stops/pursuit will also be held later in the year, with dates and locations announced in the Spring.

ICAP will also be hosting additional Planning and Zoning Workshops later this year! The Pool was impressed with the member turnout at the 2019 workshops, and even more thrilled with the post-event feedback we received. As a result, we will not only be offering two additional Intro to Planning & Zoning Workshops, but also adding two upleveled workshops to the roster. Look for additional information soon!

A

Letter

TO OUR MEMBERS

from the ICAP Board Chair

Dear ICAP Members,

Over the last few weeks, the board and office have received some questions regarding the pending litigation involving ICAP and the Iowa Auditor of State. The board would like to take this opportunity to provide some additional information regarding this litigation.

ICAP was initially contacted by the auditor's office via letter on October 21, 2019. In this communication, the auditor's office indicated it planned to perform "certain procedures" for ICAP and would review organizational transactions from 2016 to 2019. This letter also indicated the auditor's office would bill ICAP for these proposed audit/investigation services, which could potentially cost tens of thousands of dollars.

ICAP responded on October 28, 2019 and sought clarification regarding the procedures to be performed by the auditor's office, as well as the authority it was relying on to perform these procedures. To date, the auditor's office has not provided ICAP with detailed information regarding the scope of its investigation; and, with each subsequent communication from their office, the list of documents being requested has expanded.

We have voluntarily provided much of the requested information to the auditor's office, at no cost, by referring them to the documents already available on the ICAP website. As you may be aware, ICAP administrative expenditures, including board member travel expenses dating back to 2012, are publicly available on the ICAP website, and our policy regarding expense reimbursement is also available online. Furthermore, ICAP is audited annually by an outside accounting firm and expense reimbursements are reviewed as part of these procedures. Additionally, we provided the auditor's office with a copy of our most recent audit report, which is also available on the ICAP website.

The auditor's office has also requested copies of ICAP member settlement agreements. We offered to provide these documents to the state auditor but told them there would be a fee assessed for us to assemble, review and redact any confidential information from the requested documents, consistent with the Iowa open records law and other laws, such as HIPAA. ICAP provided the auditor's office an estimated fee of \$625 to complete this work, not \$22,000, as has been reported in the media. To date, the auditor's office has been unwilling to pay this required fee, which is allowed by Iowa law.

All of the above was a lead-in to the auditor's office issuing an "investigative subpoena" to ICAP on December 16, 2019. Among other things, the subpoena demanded:

- Copies of settlement agreements in excess of \$50,000 entered into by ICAP on behalf of members and related payment documents
- Final agendas and related packets of information provided to board members regarding information for their consideration and to prepare for board meetings, including stewardship reports to the board, as provided by York Risk Pooling Services, Inc.

As an organization, we are concerned by the open-ended nature of the state auditor's request, including their proposed investigation of ICAP's claim resolution procedures, which, if such information was released to the auditor's office, would be harmful to ICAP members and detrimental to the existence of ICAP. Therefore, we have filed a district court action challenging the state auditor's authority to audit and/or investigate ICAP. In short, we disagree with the state auditor's assertions that they have the authority to audit ICAP pursuant to Chapter 11 of the Iowa Code, their authority to conduct an investigation of ICAP's claims processing or resolution procedures, and their authority to bill ICAP tens of thousands of dollars for their audit and/or investigation.

Our petition was filed on December 30, 2019, in Polk County District Court, and the auditor's office will likely be represented in this litigation by the Iowa Attorney General's office. Because this dispute primarily involves a question of law, we are hopeful it will be resolved in a relatively short manner. However, litigation of this nature is not a quick process, so it is very likely it will take several months, possibly even a year or more, before a final resolution is reached.

We will remain in contact with everyone on this issue, as necessary, but all pertinent information can be found on our website at www.icapiowa.com. Please contact me if you have any questions regarding this matter. Otherwise, thank you for your time and attention, and thank you for your continued support of ICAP.

Jody Smith
ICAP Board Chair



Still winter? Yep, it's still
winter. #iowa

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